

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DANNY RIVERA, :
: Plaintiff,
: -against-
: CORRECTION OFFICER P. DIANARDO, Auburn :
: Correctional Facility, :
: Defendant. :
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MEMORANDUM & ORDER

10-CV-5554 (ENV) (JO)

VITALIANO, D.J.

Plaintiff Danny Rivera is incarcerated at Auburn Correctional Facility and filed this action against a correction officer at Auburn alleging a violation of constitutional rights under 42 U.S.C. § 1983. Rivera alleges that he has been mistreated on the basis of his religion, and he seeks to have Officer Dianardo reassigned. Without offering any opinion on the merits of plaintiff's claims, the action is hereby transferred to the United States District Court for the Northern District of New York pursuant to 28 U.S.C. § 1391(b).

A civil action based on a federal question may be brought only in "(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b). If a case is filed in the wrong district, the Court may "transfer such case to any district ... in which it could have been brought." 28 U.S.C. § 1406(a).

Venue does not lie in this District. All of the events or omissions giving rise to the claim occurred at the Auburn Correctional Facility, located in Cayuga County, New York, in the

Northern District of New York. See 28 U.S.C. § 112(a). Officer Dianardo's residence is unknown, but given his employment in Cayuga County, it is safe to assume that he does not reside in this District. Since venue is proper in the Northern District, this action shall be transferred there. See 28 U.S.C. § 1406(a).

The Clerk of Court is directed to transfer this action to the United States District Court for Northern District of New York. A ruling on plaintiff's application to proceed *in forma pauperis* under 28 U.S.C. § 1915 and enforcement of the Prison Litigation Reform Act is reserved for the transferee Court. The provision of Rule 83.1 of the Local Rules for the Eastern District of New York, requiring a seven-day delay in the transfer of relevant case materials, is waived. The Clerk of Court is directed to mark this case closed.

SO ORDERED.

Dated: Brooklyn, New York
December 9, 2010

ERIC N. VITALIANO
United States District Judge